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SENSITIVE
SIPDIS
STATE FOR WHA/CAR (ACADIEUX) (VDEPIRRO) (WSMITH)
WHA/EPSC (MROONEY) (FCORNEILLE)
STATE FOR EEB TPP/IPE (JURBAN) (JHALLOCK) (CLACROSSE)
DEPT OF COMMERCE FOR (AWILSON) (CPETERS)
EEB TPP/IPE: TMCGOWAN
USTR FOR JENNIFER GROVES

E.O. 12958: N/A

TAGS: ECON ETRD EFIN EINV PREL TRSY USTR KIPR XL JM
SUBJECT: Jamaica: 2010 Special 301 Watch List Response

REF: ALDAC 91217; 09 KINGSTON 157; 09 KINGSTON 348

Summary and Recommendation

¶1. (SBU) Embassy Kingston recommends that Jamaica remain on the Special 301 Watch list until it passes a World Trade Organization (WTO) TRIPS-compliant patent law. The country's trademark and copyright regime meet international standards, and enforcement efforts remain commendable. Progress also has been made in training officials involved in the protection of intellectual property rights (IPR) and underlying political will is to preserve and protect intellectual property rights. Ministry officials and the Executive Director of the Jamaica Intellectual Property Office (JIPO) remain committed to the passage of the Patents and Designs Act, but the process has been exceedingly slow. Once the legislation is passed, Post would recommend removing Jamaica from the Special 301 Watch List. End Summary and Recommendation.

Legislation Status, Still Waiting

¶2. (SBU) Jamaica is on the Watch List primarily because its patent and industrial designs regime does not meet WTO TRIPS standards. Jamaica has had TRIPS-compliant trademark and copyright acts in place since 1999. In one element of progress, the Parliament approved a bill to protect Geographical Indications Act and passed implementing regulations. The patent, plant variety, and industrial design laws are progressing, but JIPO has missed its two previous internal deadlines to pass the new law. Executive Director of JIPO Carol Simpson has expressed frustration to Emboffs on January 26 that the legislation process has taken exceedingly long, as slow moving anti-crime bills clog the way for other important legislation such as the Patent and Designs Act. However, the organization remains hopeful that the legislation will be effected before the next Special 301 Report falls due. Deputy Executive director of JIPO, Lilyclaire Bellamy, told emboff that a draft of the new legislation is with the Chief Parliamentary Counsel (CPC) waiting to be tabled before Parliament for discussion and passage into law.

Minister of Education's Focus on IPR

¶3. (U) Minister of Education, Andrew Holness, said in a speech on January 28 at the University of the West Indies (UWI) that more attention is to be paid to developing legislation on intellectual property rights. He commented that for too long, the country's concept of economic progress has focused entirely on the development of physical property, with very little attention given to intellectual property. The Minister said that once people start to create ideas that can go to the market, without the regulatory framework to protect their rights, there is chaos that encourages them to go elsewhere to create that intellectual property. He added that he is personally encouraging and pushing for the development of the regulations for intellectual property.

Advocacy and Training

¶4. (SBU) Embassy Kingston has continued its advocacy efforts over the past year, and in particular has continued to engage Government of Jamaica (GOJ) officials concerning the importance of bringing the country's IPR regime into full conformity with international standards. In November, 2008, in conjunction with the United States Department of Justice, the Embassy presented a workshop for Jamaican experts to share best practices in combating piracy of intellectual property. The workshop included experts from the judiciary, the Office of the Director of Public Prosecutions, JIPO, the Jamaica Constabulary Force, Jamaica Customs, and the private sector. The experts participated in drafting a handbook to combat intellectual property crimes, which is expected to enhance the country's capacity to investigate and prosecute piracy.

¶5. (SBU) The GOJ has been very keen to take advantage of training courses offered by the USG, in particular the enforcement academies offered by the United States Patent and Trademark Office (USPTO). In 2009 and early 2010 a number of Jamaicans attended training in Alexandria, Virginia, and Post continues to seek nominations of qualified individuals for such courses. As always, a lack of resources means that the GOJ is unable to send personnel for training at its own expense.

Enforcement

¶6. (SBU) Jamaica increased its enforcement successes in 2009, with police seizing illegal goods from a number of store owners, street vendors, and distributors. Numerous piracy cases have gone before the courts across the island; but if the defendant is an individual actor, the judges appear less willing to impose serious penalties. Eighty percent of the IPR cases involve counterfeit CD music; only a few cases involve counterfeit DVDs. The various bureaucracies within the GOJ have internal procedures to prevent the misuse of software licenses or the use of counterfeit software. JIPO is working with the courts to soon list these cases on their website for increasing public awareness. Jamaica has tried to be aggressive in its enforcement efforts; JIPO believes this has acted as a deterrent, and those who once dealt in counterfeits are increasingly switching to genuine products. JIPO lawyers attend court proceedings to provide legal support and have produced a CD-ROM on all IP laws as a resource for judges and their clerks.

Comment

¶7. (SBU) Post believes that Jamaica's continued inclusion on the Special 301 Watch List will encourage the country to pass the Patents and Design Act. Post believes that the GOJ in general, and the JIPO in particular, make a sincere effort to comply with IPR obligations in other areas. Post also believes that there is no real structural impediment to the passage of the law; the delay in enacting the requisite legislation has been caused by the GOJ having to focus on more pressing issues like rampant violent crime, the global economic recession, and negotiations to return to a borrowing agreement with the International Monetary Fund. End

Comment.

Parnell